

REMARKS

Claims 1-26 are pending in this application. Claims 1-9 have been withdrawn from consideration. Claims 10-26 are currently under examination. No new matter has been introduced by this submission.

I. Rejections Under 35 U.S.C. § 112

The Examiner has rejected claim 26 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention.¹ In particular, the Examiner contends that claim 26 is unclear as to Applicants intent in so far as it recites hair treated by the method of claim 10.

Claim 26 recites hair treated with the method of claim 10. As such, claim 26 is considered a product by process claim directed to a product (hair) that is defined in terms of the process by which it is made, namely hair that has been treated according to the method of claim 10. M.P.E.P. section 2173.05(p) indicates that such a product-by-process claim is proper and, as such, the instant rejection of claim 26 under 35 U.S.C. § 112 should be withdrawn.

II. Rejections Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 10-26 under 35 U.S.C. § 103(a) as allegedly being obvious over the combined teachings of WO 93/00882 (hereinafter ‘882) in view of US 6,231,844 (hereinafter ‘844) and US 4,871,530 (hereinafter ‘530). To that end, it is well established that a *prima facie* case of obviousness must satisfy at least two requirements. First, the art of record must teach, or at least suggest, the claimed invention as a whole. Second, there must be an identification of requisite motivation and a reasonable expectation of success for one of ordinary skill in the art to undertake the combination or modification proposed in the rejection.

¹ The Office Action indicates that claim 20 was rejected under 35 U.S.C. § 112, second paragraph. However, due to the subject matter of the rejection, applicants assume the recitation of claim 20 was a typographical error and the Examiner intended to reject claim 26. However, should this not be the case, applicants request clarification and reserve the opportunity to address the rejection as it may apply to any claim other than claim 26

At least for the reasons set forth below, Applicants respectfully submit that the requirements of a *prima facie* case of obviousness have not been satisfied by the current rejections.

Applicants' claims are directed generally to a method for neutralizing relaxed hair. The method comprises, in part, providing hair that has been treated with a relaxing agent and subsequently contacting the relaxed hair with one or more applications of a neutralizer mousse composition. In rejecting these claims, the Examiner first relies upon the '882 reference for its general teaching of applying a hair relaxer to hair followed by an application of a neutralizer rinse to the relaxed hair. Significantly, the Examiner acknowledges that the '882 reference differs from the claimed invention at least because it fails to teach a neutralizing composition that is applied to relaxed hair in the form of a mousse composition. In view of this deficiency, the Examiner relies upon the secondary teachings of the '844 and '530 references to support the assertion that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the neutralizing step of the '882 reference by substituting the neutralizer rinse with a neutralizing mousse composition as claimed. This however is nothing more than unsupported hindsight reasoning and cannot form the basis of a proper obviousness rejection.

As noted by the Examiner, the '844 reference does disclose foaming cosmetic compositions such as hair mousse compositions. However, the '844 reference does not pertain to methods for neutralizing relaxed hair. As such, the '844 reference is silent with respect to compositions that can be used as neutralizers for applying to relaxed hair and fails to teach or suggest that a mousse composition could be formulated and applied as a neutralizer to relaxed hair. Similarly, although the '530 reference also discloses foaming cosmetic compositions suitable for the treatment of the hair or of the skin, it too fails to teach or suggest that such foaming compositions could be formulated and applied as a neutralizer to relaxed hair. In fact, the only teaching or suggestion to apply a mousse composition as a neutralizer to relaxed hair is found in Applicants' own patent application. Therefore, in the absence of the requisite teaching or suggestion in these secondary references, it is improper to suggest that one of ordinary skill in the art would have been motivated by the cited references to substitute the neutralizer rinse of the '882 reference with a neutralizer mousse as claimed.

Furthermore, as noted on pages thirteen (13) and fourteen (14) of Applicants' own specification, one of ordinary skill in the art at the time of the invention would not have expected a neutralizer mousse composition to provide effective neutralization when applied to relaxed hair. In particular, it was thought that the formation of bubbles or lather within a mousse composition would tie up thin layers of the liquid neutralizing composition in the walls of the bubbles themselves. Because the acidic neutralizing compound or compounds would be solubilized in the same liquid tied up in the wall of each bubble, it was believed the formation of bubbles or lather would have the effect of preventing the neutralizing compound from contacting the hair in all but the smallest of surface areas. Accordingly, the neutralizing agent would not have penetrated into the hair fiber to complete the task of neutralizing excess alkalinity until the bubbles had begun to burst and the liquid was freed to diffuse into the fiber. In view of these expected difficulties, one of ordinary skill in the art would not have been motivated to modify the neutralizing rinse of the '882 reference to be a mousse composition. However, despite the characteristic bubbles or lather of a mousse composition, it was unexpectedly observed by the experimental data reported in the instant specification that the claimed neutralizing mousse compositions work as effectively and, in some instances, better than conventional non-mousse neutralizer compositions such as those reported in Example 4 on pages 22-23 of the instant specification..

For at least these reasons, Applicants respectfully assert that Claims 10-26 are not obvious over the combined teachings of WO 93/00882 in view of US 6,231,844 and US 4,871,530 and the instant rejection should be withdrawn.

CONCLUSION

In view of the foregoing Remarks, it is respectfully asserted that the rejections set forth in the Office Action of July 6, 2007 have been overcome and that the application is in condition for allowance. Therefore, Applicant respectfully seeks notification of same.

Should the Examiner have any questions regarding this Reply, or which may advance the efficient prosecution of the application, the Examiner is courteously invited to contact the undersigned at the telephone number and address listed below.

Respectfully submitted,

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/Brian C. Meadows/ _____ Date _____
Brian C. Meadows January 7, 2008

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